IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.2538 of 1999

A.Koil Raj .. Appellant

Vs.

1. The Government of Tamil Nadu
rep. by the Additional Secretary
Prohibition & Excise (VI) Department
Fort St.George, Chennai 9.

2. The Special Commissioner & Commissioner
Prohibition & Excise
Chepauk, Chennai 5.

3. The District collector
Tuticorin District.

4. The Assistant Commissioner (Excise)
Tuticorin, Tuticorin District.

5. The Divisional Excise Officer
Tuticorin, Tuticorin District. .. Respondents

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 4.12.1998 made in W.P.No.17670 of 1998.

For Appellant : Mr.S.V.Jayaraman, S.C.
For Mr.Anand Abdul &
Vinod Associates

For Respondents : Mr.G.Sankaran, Addl.G.P.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

Assailing the dismissal of W.P.No.17670 of 1998 by the learned single Judge by order dated 4.12.1998, the appellant has filed the above appeal.

2.1. The backdrop of the case, which led to the filing of the appeal, is that the appellant was the successful bidder in respect of an arrack Shop No.48, Kachanavillai Village for the excise year 1997-98. On payment of necessary privilege amount of Rs.1,42,313/-, security deposit of Rs.5,000/- and licence fee of Rs.2,500/- on 27.6.1997 at the Divisional Excise Office, he was required to locate a shop for issuing necessary licence.

2.2. The appellant proposed to locate a shop at Door No.17/35, Main Road, Kachanavillai Village and sent the agreement copies for issuance of licence. As the proposed place was hazardous, the appellant was directed to select an alternative place and therefore, the appellant located a shop at No.16/91, Kachanavillai Village. But, the same was also located within the prohibited distance of school and worshipping place attracting Rule 18 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (for brevity "Rules") and therefore, the appellant was directed to select another place.

2.3. In the meanwhile, the Kachanavillai Village Panchayat resolved against the proposed IMFL shop. As the appellant could not locate a suitable place for running a shop and the Panchayat also passed a resolution not to open a shop within its limits, the appellant by representation dated 29.7.1997 requested for refund of the deposit made by him. But the same was rejected by the impugned proceedings of the first respondent holding that there is no provision for refund of the amount under the Rules, which necessitated the appellant to move this Court for issue of writ of Certiorarified Mandamus to call for the records of the first respondent in Lr.No.2164/PE.VI/98-8 dated 27.10.1998, quash the same and consequently, to direct the respondents to refund the privilege amount, security deposit and licence fee totalling Rs.1,49,813/- with interest at the rate of 18% per annum from the date of claim till the date of payment.

2.4. After hearing both sides, the learned Single Judge, by order dated 4.12.1998 held that the appellant is not entitled to the refund of deposit made by him as per Rule 10(3) of the Rules and in view of the agreement made by the appellant agreeing to abide the Rules of auction and accordingly, dismissed the writ petition. Hence, the appeal.

3.1. The learned senior counsel for the appellant contends that as the appellant did not run the shop, he is not entitled to the refund of deposit made by him based on legitimate expectation.

3.2. However, it is contended by the learned senior counsel that the learned single Judge failed to appreciate that the refusal to refund the deposit made by the appellant is arbitrary, unreasonable and amounts to unjustified enrichment and the same is opposed to equity, justice and good conscience.

4. Per contra, the learned Additional Government Pleader justifying the impugned proceedings contends that the appellant is not entitled to the relief sought for, as per the Rules and as per the terms and conditions agreed between the appellant and the respondents.

5. We have given careful consideration to the submissions of both sides.

6. The issue that arises for our consideration in this appeal is whether the doctrine of fairness or reasonableness can amend, alter or modify the terms of the statutory contract?

7. It is apposite to refer the relevant Rules, which reads as under.
Rule 10
Remittance of privilege amount by auction purchaser-

(1) ...
(2) ...
(3) The privilege amount once remitted shall, on no account, be refunded except in a case referred to in sub rule (2) of rule 11 and sub-rule (4) of rule 14.

Rule 11
Confirmation of sale privilege.-

(1) ...

(2) The Collector may either suo-moto or on appeal, review any case of confirmation by the Sale Officer. If he is satisfied, he may set aside the order of confirmation after recording his reasons in writing and providing an opportunity to the auction purchaser to eb heard in person. If on review, the Collector cancels the order of confirmation of sale of the privilege by Sale Officer, the Collector shall order the re-auctioning of the shop and shall also direct the refund of the privilege amount and the earnest money deposit to the auction purchaser."

Rule 14
Renewal of licence:-
(1) ...
(2) ...
(3) ...
(4) If a licence is not renewed, the licence fee and the privilege amount remitted by the licensee shall be refunded to him after deducting the Government dues, if any.

Provided that if the Government consider it necessary in the public interest they may, by notification declare that the licences to be granted or to be renewed for a particular year shall not be renewed for the subsequent year.

8. It is not the case of the appellant in the instant case that he could not run the shop because of the orders passed under Rule 11(2) or 14(4) of the Rules, referred to above. If that be so, we are unable to accept the contentions of the learned senior counsel that the refusal to refund the deposit made by the appellant is arbitrary, unreasonable and amounts to unjustified enrichment and opposed to equity, justice and good conscience, as none of the theories are attracted in the instant case, since the appellant had agreed to the statutory rules and the terms and conditions of the contract.

9. That apart, it is a settled law that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim □dura lex sed lex□, which means □the law is hard, but it is the law□. Equity can only supplement the law, but it cannot supplant or override it, vide Raghunath Rai Bareja v. Punjab National Bank,(2007) 2 SCC 230. In the said decision, the Apex Court, referred to and reiterated the well settled principles in the earlier decisions cited hereunder:

"What is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law, vide Madamanchi Ramappa v. Muthaluru Bojjappa, AIR 1963 SC 1633

Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law, vide Council for Indian School Certificate Examination v. Isha Mittal, 2000 (7) SCC 521.

Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law, vide P.M. Latha v. State of Kerala, 2003 (3) SCC 541.

It is now well settled that when there is a conflict between law and equity the former shall prevail, vide Laxminarayan R. Bhattad v. State of Maharashtra, 2003 (5) SCC 413

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom, vide Nasiruddin v. Sita Ram Agarwal, 2003 (2) SCC 577

Equitable considerations have no place where the statute contained express provisions, vide E. Palanisamy v. Palanisamy, 2003 (1) SCC 123.

The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations, vide India House v. Kishan N. Lalwani, 2003 (9) SCC 393."

10. The claim of legitimate expectation advanced on behalf of the appellant also, in our considered opinion, is not sustainable in law, as the rights and duties of the parties are fully governed by the terms of the contract, which are statutory in nature.

11. Moreover, it is a trite law that legitimate expectation is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a □legitimate expectation□ of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the □legitimate expectation□, vide Ram Pravesh Singh v. State of Bihar,(2006) 8 SCC 381 .

12. In the case on hand, when the contract between the parties is governed by the Tamil Nadu Liquor (Retail Vending) Rules and the terms and conditions of the licence, the same are binding both the parties. Neither of them can depart from such Rules and terms of the contract. In a contract with the State there is no legitimate expectation to alter the express terms of the statutory contract. The duty to act fairly cannot be sought to be imported into a contract, much less a statutory contract to modify, alter or vary its terms and to create an obligation upon the State to dispense with its rights under the Rules to demand the notional loss sustained by the State by the failure on the part of the

appellant to act upon the licence which is granted to run the impugned shop.

13. The doctrine of fairness or duty to act fairly and reasonably is, of course, a doctrine developed in the administrative law to ensure the Rule of Law and to prevent the failure of justice, where the action is administrative in nature. Just as principles of natural justice ensure fair decision where function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative in character. But, at the same time, the said doctrine of fairness and the duty to act fairly and reasonably cannot certainly be invoked to amend, alter or vary the express terms of the contract between the parties. This is so even if the contract is governed by the statutory provision, viz., where it is a statutory contract. Because, in such cases, the mutual rights and liabilities of the parties, whether licensee or the State are governed by Rules and the terms of the agreement entered into thereunder, which also have the statutory force and the parties, who approach for grant of licence, are therefore, quite aware of the conditions that are sought to be complied with for grant of licence as contemplated under the Rules, even before they apply for such licence. Having thus being cognizant of the conditions sought to be complied with and applied for the licence, knowing such statutory provisions, as a prudent business person, the appellant ought to have taken a decision even at the time of applying for such licence and participating in the auction. The inability to locate the shop in an unobjectionable place or any opposition for locating the shop by the third parties, cannot be a ground for the appellant either to claim refund of the deposit amount, which he is not entitled to in view of Rule 10(3) of the Rules.

14. For the reasons aforesaid, we have no hesitation to hold that the refusal to refund the deposit made by the appellant is neither arbitrary nor unreasonable, nor the same amounts to unjustified enrichment, nor opposed to equity, justice and good conscience, nor contrary to the doctrine of fairness, inasmuch as those doctrines are alien to the terms of the contract, much less the impugned statutory contract.

Finding no merits, this writ appeal is dismissed. No costs.

kpl

To

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